Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

STEPHEN R. CLASSE,
Petitioner,

v.

COLLEGE OF SAINT MARY,
a nonprofit corporation,
and
ADELE L. HARRISON,
an individual,
Respondents.

On Petition For A Writ Of Certiorari To The Court of Appeals of Nebraska

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This is a defamation of character case. I, the Petitioner, elected to handle the case pro se because, based on prior experience in the use of legal counsel, I decided it would be too expensive for me to have an attorney represent me. Here are my questions:

1. Isn't it about time to acknowledge that the corrupt and shameful "good ole boy" system is not Due Process and Equal Protection; and isn't it about time to fix the system so that judges who are willfully abusive are punished and so that victims of judicial abuse are compensated for the damages suffered?

2. Was it Due Process and Equal Protection for the district court judge to issue a summary judgment against me on my defamation claim against Harrison when there was solid evidence to show that Harrison had lied in falsely imputing that I was unfit to perform the duties of my employment and, therefore, her statements were equivalent to malice in fact and were not privileged?

3. Was it Due Process and Equal Protection for the district court judge to refuse to allow me to amend my petition to join CSM as a defendant in the defamation claim when: (a) there was solid evidence that CSM refused to do a reasonable and proper investigation of the defamation, (b) the law clearly provides that an employer may be joined as a defendant on the basis of its being vicariously liable

for an employee's slanderous remarks, and (c) my *unknowing* failure to ask the permission of the judge before I amended my petition was a mere technicality and not a just reason to deny me a trial?

4. Was it Due Process and Equal Protection for me to have my case decided by a "good ole boy" district court judge who was prejudiced against me for not having legal representation and for being the little guy in a case against a large institution, and biased in favor of the large institution and their large-firm attorneys, and who consequently abusively denied me my right to a trial and thus deprived me of the chance to mitigate the unjust damage to my reputation as a teacher and as a person and to recover my loss of earnings?

5. Was it Due Process and Equal Protection for me to have my case appealed before a panel of "good ole boy" appeals court judges who, like the district court judge, were prejudiced against me and biased in favor of the large institution and their large-firm attorneys, and who consequently unjustly affirmed the actions of the district court judge?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Stephen R. Classe of Omaha, Nebraska, respectfully prays that a writ of certiorari be issued to review the order of the Nebraska Court of Appeals in this case. In contravention of the requirements of the Constitution of the United States, the Nebraska Courts have embarked on an unlawful exercise of judicial power, which appears designed to thwart justice for a pro se plaintiff and instead unjustly protect the interests of a large Nebraska institution represented by a large law firm even though (a) there was solid evidence that a representative of the institution was lying when she falsely imputed the pro se plaintiff's unfitness to perform the duties of his employment, and (b) there was solid evidence that the institution refused to do a reasonable and proper investigation of the defamation. Because the case involves issues of Due Process and Equal Protection that have not been, but should be, settled by the United States Supreme Court, and because numerous citizens have been and are being similarly victimized under current practice, this case is of utmost importance.

OPINIONS BELOW

The Nebraska Supreme Court did not issue an opinion, but merely overruled my petition for further review as shown in its order included as Appendix E. The Nebraska Court of Appeals likewise did not write an opinion but instead issued a summary

disposition which is included as Appendix A. It is not reported in N.W.2d.

JURISDICTION

The Nebraska Supreme Court order overruling the petition for further review was entered on October 24, 2007. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the Constitution of the United States provides that "no state shall ... enforce any law... nor... deprive any person... of property without *due process* of law ... nor deny any person...the *equal protection* of the laws.

STATEMENT OF THE CASE

I. The Underlying Litigation in The District Court of Douglas County, Nebraska

A. Nature and Issues of the Case

1) Defamation Claim against Harrison – The issue was whether or not Harrison's statements were privileged in view of the evidence put forth that she had lied in falsely imputing that I was unfit to perform the duties of my employment and my contention that, therefore, her statements were equivalent to malice in fact and were not privileged.

2) Defamation Claim against CSM – The issue was whether or not my claim against CSM should have been allowed in view of the facts that: (a) there was solid evidence that the institution refused to do a reasonable and proper investigation of the defamation; (b) the law clearly provides that an employer may be joined as a defendant on the basis of its being vicariously liable for an employee's slanderous remarks; and (c) my *unknowing* failure to ask the permission of the judge before I amended my petition was a mere technicality and not a just reason to deny me a trial.

B. The Issues Actually Tried in the Trial Court

1) Defamation Claim against Harrison - There was no trial on this claim.

2) Defamation Claim against CSM - There was no trial on this claim.

C. How the Issues Were Decided

1) Defamation Claim against Harrison - The judge issued a summary judgment in favor of Harrison ruling that her statements were privileged.

2) Defamation claim against CSM - The judge refused to let me amend my petition to include this claim because I, unknowingly, did not ask his permission.

II. Proceedings in the Nebraska Court of Appeals

The Opinion of the Nebraska Court of Appeals shows that, like Judge Schatz, its judges too were prejudiced against me and biased in favor of the defendants. The Court of Appeals did not see fit to write an opinion on the arguments presented to it. Instead, it issued a "Summary Disposition" of the case, against me, under its Rule 7A(1), and cited certain cases and rules – which citations, interestingly, supported my arguments!

III. Proceedings in the Nebraska Supreme Court

I implored the Nebraska Supreme Court to accept my case for review, to review it carefully and thoroughly, and to remember that the purpose of our legal system is to ascertain the truth and to provide justice. The Nebraska Supreme Court did not answer any of my charges. It merely overruled my Petition.

REASONS FOR GRANTING THE PETITION

There are few things more detrimental to justice than abusive judges.

This case is illustrative of what happens to pro se plaintiffs in cases against large institutions in Nebraska.

This case is yet another "good ole boy" case. It is a case in which an unscrupulous judge unjustly ruled against "the little guy" who could not afford an attorney and unjustly ruled in favor of a large institution represented by a large law firm.

This case shows yet again that unscrupulous judges are not afraid to use abusive practices because they are protected by judicial immunity.

The purpose of our court system as established by our founding fathers is to provide justice. The United States constitution provides that "the right of trial by jury shall be preserved" for justice sake.

But Nebraska judges are apparently doing their best not to preserve the right to a trial by jury but rather to deny it.

This case comes on the heels of *Classe v. Fitzgerald, Schorr, Barmettler & Brennan* – a legal malpractice case in which the Plaintiff was also denied his right to a jury trial by the Nebraska courts. See Petition

for Writ of Certiorari No. 07-698 filed November 20, 2007.

In the *Fitzgerald* case, the Nebraska courts unjustly denied the Plaintiff a jury trial even though: (a) the Plaintiff could get neither an attorney nor an expert witness because the attorneys in Nebraska (and Iowa) would not align themselves against their fellow attorneys; (b) the judge refused the Plaintiff's request that he appoint an impartial expert; (c) the Defendants' expert, protected by immunity, had issued a false and misleading affidavit favoring his fellow attorneys; (d) the judge had refused to make a suitable inquiry, under *Daubert,* into the reliability of the Defendants' expert's affidavit; and (e) **the Plaintiff had presented a plausible case that there was a genuine factual dispute about the quality of FSBB's professional conduct – a fact confirmed by the Plaintiff's acquisition of a highly qualified expert before a final order had been issued, who issued an affidavit saying that the Defendant attorneys did not conduct their work in conformity with the skill and knowledge ordinarily possessed by attorneys.** Because of the willful abuse by the judges in the *Fitzgerald* case the Plaintiff suffered damages of approximately $133,000.

Now, in the case at hand, the Nebraska courts have again unjustly denied the Plaintiff his right to a jury trial even though **the Plaintiff had presented a plausible case that: (a) there was solid evidence that a representative of the institution was lying when she falsely imputed the plaintiff's unfitness to**

perform the duties of his employment, and (b) there was solid evidence that the institution refused to do a reasonable and proper investigation of the defamation. Because of the willful abuse by the judges in the case at hand the Plaintiff suffered monetary damages of approximately $86,000 – but, much more importantly, the Plaintiff suffered unjust damage to his reputation as a teacher and as a person.

The total damages suffered by victims of judicial abuse in Nebraska and across the nation must be staggering.

That such judicial abuse, commonly known as the "good ole boy" system, is tolerated in this country is shameful. Our forefathers, who provided in our constitution that "the right of trial by jury shall be preserved," must be rolling over in their graves.

So, for justice sake, this is a case that this Court should hear.

I. Review is warranted because justice demands that our corrupt and shameful "good ole boy" system should be fixed so that judges who are willfully abusive are punished and so that victims of judicial abuse are compensated for the damages suffered.

A. Under our present system of judicial immunity, state judges are immune from suit even

for the most bizarre, corrupt, or abusive of judicial acts.

In the *Dykes v. Hosemann case,* 776 F.2d 942 (1985), the Eleventh Circuit first stripped a Florida judge of judicial immunity for actions clearly violating the due process clause. Then, in a rehearing en banc, the full panel completely reversed the prior decision and held that judicial independence was so strong a concern that due process must yield before it. Judge Hatchett, in a sharp dissent, said that "According to the majority, judicial immunity even protects a judge...who *conspires...to violate another party's federal constitutional rights.*" He said **"This case also points up the reason citizens and legislators are increasingly demanding that lawyers and judges charged with ethical violations be judged not by other lawyers and judges under the "good ole boy" system, but by persons outside the legal system."** And he concluded "It is difficult to understand how every person in the United States may be held accountable in damages for conspiring to violate another person's federal constitutional rights, except those persons trained in constitutional guarantees, charged with interpreting the constitution, and oath bound to deal fairly with parties in litigation."

B. The case at hand is clearly a "good ole boy" case – one in which the judge showed gross favoritism to a large institution represented by a large law firm. The record shows clearly that District Court Judge Schatz willfully abused my right to Due Process in order to favor the institution

and its attorneys. And the record shows clearly that Nebraska Court of Appeals judges Inbody, Carlson and Moore willfully abused my right to Due Process in order to favor the institution, its attorneys, and Judge Schatz.

C. I plead with this Court to fix the problem of willfully abusive judges! It is clear that something needs to change. It seems obvious, as Judge Hatchett suggested in the *Dykes* case, that judges should be judged by someone other than judges.

II. Review is warranted because the district court judge issued a summary judgment against me on my defamation claim against Harrison in spite of the fact that there was solid evidence to show that Harrison had lied in falsely imputing that I was unfit to perform the duties of my employment and that, therefore, her statements were equivalent to malice in fact and were not privileged.

A. Harrison, the institution's employee, lied in falsely imputing that I was unfit to perform the duties of my employment.

1) Harrison lied and defamed me by telling Sally Bisson and Martin Larrey falsely that there were serious deficiencies in my teaching methods and in my treatment of the students. **The facts show that her statements were false**. Harrison

told Larrey that she met with me for two hours on January 26, 2005, and reviewed students' concerns and discussed how I could change my teaching methods and that she could not discern sufficient improvement in my instructional methods over the next three weeks. Her implication was that she called the meeting with me to discuss complaints about me raised by the students and that such complaints were discussed for two hours! This is categorically not true! Harrison did not call the meeting and no complaints about me were discussed – not even for one minute! Harrison later admitted in her deposition that the meeting was called by me – not her. Harrison also admitted in her deposition that the purpose of the meeting was so that I could talk to her about one of the students in ACC 362, and get some help from her in putting my course materials on the IQ Web. (The student was Sara Campbell.) Harrison also admitted that I showed her the results of Sara Campbell's pretest, first quiz and first homework assignment. When asked "Was it not obvious from (Sara's) answers on the pretest that she did not have a good understanding of basic accounting principles? Harrison answered "Yes." At the actual January 26 meeting, after we finished going over Campbell's pretest, first quiz results, and first homework assignment results, I told Harrison about my meeting with Thomas Allison from the Achievement Center regarding Campbell. We discussed the fact that Sara cannot write at anywhere close to a senior-in-college level and the need to get Sara special help in both accounting and writing. We then spent an hour and a half working

on the computer to put my course materials on the IQ Web. When I asked Harrison in her deposition "Is it not true that when we met to discuss my concerns with Sara and my request for help with the IQ Web, that there was no discussion of deficiencies in my teaching methods?" In answer Harrison admitted that "The fact that we were looking at ways to augment the course meant I was dealing with concerns from the students. Explicitly, did I list out their complaints at that time? No." It should be noted that there was no discussion of "ways to augment the course." And when asked later in her deposition "What exactly do you allege that you told me at our meeting on January 26 that I needed to improve on?" she said "I don't recall a specific item." **The fact is that there never was any discussion that would even remotely suggest that there were deficiencies in my teaching methods or in my treatment of the students. And Harrison lied in suggesting otherwise.**

2) My teaching methods and treatment of the students were totally appropriate and professional. Here are the facts:

- I had produced and distributed a thoughtful syllabus
- I had developed and used a meaningful student profile
- I had prepared and administered a telling pretest
- I had been well-prepared for all of my lectures
- I had arrived on time and taught all of my classes

- I taught the information that was in the textbook
- I answered student questions in class thoroughly
- I had prepared and administered meaningful quizzes
- I had selected appropriate case studies and asked the students to answer them in the form of business letters to me so as to help them develop their written communication skills
- I had graded and returned the quizzes and case studies promptly
- I had put all the course materials on the IQ Web
- I had discussed Sara Campbell's apparent learning problems with the Achievement Center
- I had reported Sara Campbell and Melissa Brandt under the College's early warning system
- I had answered student email thoroughly
- I had complied with all the College's rules and regulations
- I had kept Ms. Harrison informed on what was happening in my class
- I treated the students with courtesy and respect

3) Although Adele Harrison never observed my instructional methods, an *experienced* teacher from Metropolitan Community College did! On April 8, 2004, less than eleven months prior to

my firing, Charlie Ferguson visited my classroom at MCC to observe my instructional methods. In his report, Mr. Ferguson gave me the *highest possible ratings* in Presentation, Application/Interaction, and Rapport. Mr. Ferguson's written comments said that "Mr. Classe is outstanding, working harder during break than many faculty work during class time," and that Mr. Classe "Knows all students by first name" and is "Obviously concerned about their progress."

4) I believe that the reason Harrison and CSM wanted to get rid of me was because they wanted to cover up what was happening in their fledgling business administration program. They wanted to cover up the fact that the students, like Sara Campbell who was a second semester senior and ready to graduate and enter the business world, did not have a good understanding of even the most basic accounting principles. They wanted to cover up the fact that Sara Campbell could not spell or write grammatically. They wanted to cover up the fact that Sara Campbell needed remedial help and that they failed to give it to her. And they wanted to cover up the fact that Sara Campbell's grades suggested a competence that she did not have.

B. Because Harrison was lying, her statements were equivalent to malice in fact and were not privileged.

1) The *Bartles* case (Neb. 1970) shows that a publication loses its character as privileged if

there is such a gross disregard of the rights of the person injured that the actions are equivalent to malice in fact. And the *Kloch* case (Neb. 1985) shows that a defamation claim is appropriate when there is a reckless disregard of truth or falsity.

2) *Bartles* applies to this case because there was a total disregard of my rights. Neither Harrison nor CSM gave me the opportunity to exercise my right to defend myself against the false allegations. I was even denied my right to the grievance procedures that are set forth in the Adjunct Faculty Handbook.

3) *Kloch* applies to this case because there was a reckless disregard as to the truth or falsity of the allegations made against me. Neither Harrison nor CSM, in the personage of Bisson and Larrey, ever made any effort to ascertain the truth. They never even talked to me to give me a chance to tell them the truth – even though in justice and by contract they had an obligation to do so. And Harrison was lying when she told Larrey that she met with me for two hours on January 26, 2005, and reviewed students' concerns and discussed how I could change my teaching methods and that she could not discern sufficient improvement in my instructional methods over the next three weeks.

4) And from *Mayer* (Neb. 1985) we know that any reasonable doubt as to the existence of material fact in a summary judgment motion must be resolved against the moving party. In this case

this means that any reasonable doubt must be resolved against the Defendants and in my favor. In this case, of course, there should be no reasonable doubt as to the existence of material fact. There clearly is the existence of material fact.

5) And from *Bruning* (Neb. 1995) we know that summary judgment is an extreme remedy that should be used sparingly because it may deny a trial to a person that deserves a trial. The summary judgment that was issued clearly was inappropriate.

6) Before a party is entitled to the benefit of such a statutory remedy as summary judgment, he should bring himself squarely within the spirit and the letter of the statute. *Bowlds v. Smith*, 180 N.E.2d 184 (Ohio 1961). But this was not done in this case.

7) "The falsity of the publication when coupled with the fact that the defendant made no effort to ascertain its truth or falsity – becomes sufficient to show malice." *Corpus Juris Secundum*, Para. 173, Libel and Slander. **Harrison's statements about me were false, she did not discuss the alleged deficiencies with me, the facts show clearly that she lied in saying that she did discuss the alleged deficiencies with me, and the law provides that such behavior constitutes malice!**

III. Review is warranted because the district court judge refused to allow me to amend my petition to join CSM as a defendant in the defamation claim in spite of the facts that: (a) there was solid evidence that the institution refused to do a reasonable and proper investigation of the defamation, (b) the law clearly provides that an employer may be joined as a defendant on the basis of its being vicariously liable for an employee's slanderous remarks; and (c) my *unknowing* failure to ask the permission of the judge before I amended my petition was a mere technicality and not a just reason to deny me a trial.

A. There was solid evidence that the institution refused to do a reasonable and proper investigation of the defamation.

1) CSM, in the personage of Bisson and Larrey, actively participated in the defamation. Neither Bisson nor Larrey bothered to learn the truth before they fired me and refused to conduct a proper investigation in accordance with the provisions of the Adjunct Faculty Handbook.

B. The law clearly provides that an employer may be joined as a defendant on the basis of its being vicariously liable for an employee's slanderous remarks. *Corpus Juris Secundum*, Libel and Slander, Para. 126.

C. My *unknowing* failure to ask the permission of the judge before I amended my petition was a mere technicality and not a just reason to deny me a trial.

1) While Rule 15(a), cited by the high court, provides that in situations such as this that a party may amend the party's pleading only by leave of court, it also provides that "*leave shall be freely given when justice so requires.*" The rule clearly requires justice. The rule's intent is not to punish a pro se party who was not aware of the rule. And the rule does not provide that leave should not be granted to a pro se party who, not knowing the rule, fails to ask permission, and then, when told of the rule, respectfully asks permission. Again, the rule says that "*leave shall be freely given when justice so requires!*"

2) I admitted to the court that I am not an attorney and that I was not aware of this rule when I tried to amend my petition. I apologized for not getting leave of the court. I pointed out to the court that the rules of amendment are concerned with substance and justice and that amendment of the petition is ordinarily granted where justice requires that it be granted. I showed the court that I had a solid case against CSM and that I had the right to seek remedy against them. I asked the court not to strike my amended petition. I was asking, albeit belatedly, for leave of court. But the court refused to grant my belated request for leave of court and instead struck my amended petition. And the

only logical reason it acted in this manner was that it was prejudiced against me because I did not have an attorney and because I was a "little guy" against a large Nebraska institution. Even though the court's own rule says plainly that "*leave shall be freely given when justice so requires,*" and even though the facts showed clearly that justice required that I be allowed to include CSM my defamation claim, the court refused to let me amend the petition as needed.

IV. Review is warranted because the district court judge was prejudiced against me for not having legal representation and for being the little guy in a case against a large institution, and biased in favor of the large institution and their large-firm attorneys, and abusively denied me my right to a trial and thus deprived me of the chance to mitigate the unjust damage to my reputation as a teacher and as a person and to recover my loss of earnings.

A. Judicial abuse of discretion exists when the judge, within the limits of authorized judicial power, elects to act or refrains from action, but the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result in matters submitted for disposition through the judicial system. *In-Line Suspension v. Weinberg & Weinberg*, 12 Neb. App. 908, 687 N.W.2d 418 (2004).

B. Trial court abuses its discretion in granting or denying motion for relief when the grant or denial is clearly against logic and the effect of facts and inferences supporting the grant or denial. *Freels v. Winston*, 579 N.E.2d 132 (Ind. 1991).

C. Where there is ... mistake, relief *must* be granted by a court by the correction of its decrees, in the interests of justice. *American Trucking Assns. V. Frisco Transp. Co.*, 358 U.S. 133 (Mo. 1958).

D. I believe that Judge Schatz was prejudiced against me because I was the "little guy" in a case against a respected institution in Nebraska and because I did not have an attorney represent me.

E. Following are comments, actions, and inactions by Judge Schatz that show clearly the Judge's prejudice against me:

1) On December 6, 2006, in the hearing on my Motion to Reconsider, Judge Schatz (1) made a sarcastic comment in answer to my allegation that CSM defamed my character, and (2) prevented me from stating my case against CSM. Following is the exchange as stated in the Bill of Exceptions:

> THE COURT: What actions were those that you don't claim were privileged?
>
> MR. CLASSE: Well, they fired me without even talking to me.

THE COURT: Well, you've claimed they fired you unjustly.

MR. CLASSE: Right.

THE COURT: In effect, (they) admitted they did that.

(Note that the judge *knows* that I was fired unjustly!)

MR. CLASSE: Well, as a result of that, they defamed my character.

THE COURT: I don't – that doesn't follow sir.

MR. CLASSE: Well, I think it does, Your Honor, with all due respect.

THE COURT: (Sarcastically and under his breath) Who did they defame your character to?

MR. CLASSE: Pardon me? I'm sorry. I didn't hear what your Honor said.

THE COURT: Well, the Court, having considered Exhibit 9 and the arguments of the attorneys, finds...

Had I been permitted to answer His Honor's sarcastic question, as stated above, I would have said that CSM defamed me to *my prospective*

employers and to my friends, relatives and clients who were aware of my abrupt departure from CSM. **The unjust firing – and the connotation that I did something wrong – caused me to lose out on two employment opportunities and will effectively prevent me from ever being able to get another teaching job and from ever working for a Catholic organization, and, more importantly, caused damage to my reputation as a teacher and as a person.** Under the law, an employer can be held liable for defamation when it participates *vicariously* in an employee's defamation of a person – and this is exactly what CSM did! His Honor knew this, of course, but apparently wanted to prevent me from stating it.

2) In spite his knowing and admitting that CSM fired me unjustly and that I had a solid case against them and that I had the right to seek remedy against them, and having been shown that rules of evidence are concerned with substance and justice and that amendment of a petition is ordinarily granted where justice requires it, Judge Schatz dismissed my defamation claim against CSM on a legal technicality – i.e., that I, albeit unknowingly, failed to get "leave of court" to file my amended petition.

3) And in spite of having been shown the law providing that a publication is *not* privileged if there is such a gross disregard of the rights of the person injured that the defamatory statements are equivalent to malice in fact, and a

host of credible evidence to show that there was a total disregard of my rights, and having been shown the law that the Court must view the evidence in the light most favorable to me, Judge Schatz ruled that Harrison's defamatory statements were privileged communication and dismissed my defamation claim against Harrison.

V. Review is warranted because the panel of appeals court judges who, like the district court judge, were prejudiced against me and biased in favor of the large institution and their large-firm attorneys, and unjustly affirmed the actions of the district court judge.

A. The Order of the Court of Appeals shows that its judges, too, are prejudiced in much the same manner as Judge Schatz. The Court of Appeals did not see fit to write an opinion on the arguments presented to it. Instead, it issued a "Summary Disposition" of the case, against me, under its Rule 7A(1), and cited certain cases and rules – which citations, interestingly, supported *my* arguments! Following are "errors" made by the Court of Appeals:

1. The Court of Appeals *erred* when it affirmed the District court order of September 21, 2006, i.e., the summary judgment ruling in favor of Harrison, and, in so doing, denied me my right to a jury trial against Harrison. Without including a

written opinion and without explaining the reasons the citations were included, the Court of Appeals Order included the following citations: *Nolan v. Campbell*, 690 N.W.2d 638 (2004) and *Young v. First United Bank of Bellevue*, 516 N.W.2d 256 (1994). The cited cases, as shown herein, support *my* argument!

a) A summary judgment is proper only when there is no genuine issue of material fact. *Nolan v. Campbell.* In the case at hand there *was* a genuine issue of material fact and so the summary judgment was not proper. The genuine issue of fact was whether Harrison's statements were made in good faith or whether they were, instead, "equivalent to malice in fact." And there was a lot of solid evidence, as explained herein and as put forth at the time of the summary judgment hearing, to show clearly that Harrison lied and that her statements were equivalent to malice in fact.

b) The summary judgment was erroneous because it declared that Harrison's statements were privileged when they weren't. As described fully in my briefs to the Court of Appeals and as described briefly herein, Harrison's statements were *not* privileged because they were made with a reckless disregard for the truth and a gross disregard for my right to defend myself against the false statements. Answers given in her deposition show clearly that Harrison was lying when she said or implied that she called a January

26, 2005, meeting with me to discuss complaints about me raised by Campbell and that such complaints were discussed. Nebraska case law provides that a plaintiff may bring an action for defamation if he can show that the defendant made the defamatory statement with reckless disregard to its truth or falsity. *Kloch v. Ratcliffe*, 375 N.W.2d 916 (Neb. 1985). And Nebraska law also provides that a publication is not privileged if there is such a gross disregard of the rights of the person injured that the defamatory statements are equivalent to malice in fact. *Bartles v. Retail Credit Company*, 175 N.W.2d 292 (Neb. 1970).

c) Spoken or written words are "slanderous" or "libelous per se" if they falsely impute unfitness to perform the duties of employment. *Nolan v. Campbell.* The evidence shows clearly that Harrison's statements were false, that they imputed my unfitness to perform my duties, and that they were equivalent to malice in fact. There can be no doubt that, pursuant to *Nolan v. Campbell*, Harrison's words were slanderous or libelous per se.

d) The appellate court is supposed to view the evidence in the light most favorable to the party against whom the judgment was granted and give such party the benefit of all reasonable inferences deductible from the evidence. *Nolan v. Campbell* and *Young v. First United Bank of Bellevue.* The Court of Appeals did not do this.

2. The Court of Appeals also *erred* when it affirmed the District court order of December 8, 2006 and, in so doing, denied me my right to a jury trial against CSM. That District court order was erroneous because it violated my right to join CSM as a defendant on the basis of its being vicariously liable for Harrison's defamatory remarks. The law provides that an employer may be joined as a defendant on the basis of his being vicariously liable for an employee's slanderous remarks. *Corpus Juris Secundum*, Libel and Slander, Para. 126.

The Court of Appeals, again without including a written opinion and without explaining the reasons for the citations, cited the following to support its order: Neb. Ct. R. of Pldg. in Civ. Actions 15(a) (rev. 2003); and *State v. Shepard*, 477 N.W.2d 567 (1991). These citations, too, interestingly, support *my* argument!

The Court of Appeals is apparently suggesting that I failed to follow the court's rule number 15(a) and get "leave of court," i.e., permission of the judge, before filing an amended petition to join CSM as a defendant in this case and that I have to live with the consequences of my failure. The Court of Appeals is apparently relying on the fact that the *Shepard* case provides that "if defendant (of course I am the plaintiff but the high court apparently believes this criminal case sets precedent for me) chooses to represent himself, he must be held

responsible for his ineptness of counsel, even though that counsel was himself." I could live with that – if the court was *fair and impartial* and seeking *justice*. But the court definitely was not fair and impartial – and definitely was not seeking justice.

Justice required that I should have been allowed to sue CSM (as well as Harrison). It must be remembered that CSM in this case was not an innocent bystander; but rather, in the personage of Bisson and Larrey, it actively participated in the defamation. Neither Bisson nor Larrey bothered to learn the truth before they fired me and refused to conduct a proper investigation in accordance with the provisions of the Adjunct Faculty Handbook. This clearly is a genuine issue of material fact.

While Rule 15(a), cited by the high court, provides that in situations such as this that a party may amend the party's pleading only by leave of court, it also provides that "*leave shall be freely given when justice so requires.*" The rule clearly requires justice. The rule's intent is not to punish a party who was not aware of the rule. And the rule does not provide that leave should not be granted to a party who, not knowing the rule, fails to ask permission, and then, when told of the rule, asks permission. Again – the rule says that "*leave shall be freely given when justice so requires.*"

I admitted to the court that I am not an attorney and that I was not aware of this rule when I tried to amend my petition. I apologized for not

getting leave of the court. I pointed out to the court that the rules of amendment are concerned with substance and justice and that amendment of the petition is ordinarily granted where justice requires that it be granted. I showed the court that I had a solid case against CSM and that I had the right to seek remedy against them. I asked the court not to strike my amended petition. I was asking, belatedly, for leave of court. But the court refused to grant my belated request for leave of court and instead struck my amended petition. And the only logical reason it acted in this manner was that it was prejudiced against me because I did not have an attorney and because I was a "little guy" against a Nebraska institution. Even though the court's own rule says plainly that "*leave shall be freely given when justice so requires,*" and even though the facts showed clearly that justice required that I be allowed to include CSM my defamation claim, the court refused to let me amend the petition as needed.

3. The Court of Appeals order, just as the district court order, was *prejudicial.* There is no other logical explanation why the judges would rule the way they did.

a) It is obvious that summary judgment should not have been granted in favor of Harrison in view of the genuine issue of material fact that existed surrounding the question of whether her statements were made in good faith or whether they were equivalent to malice in fact.

b) It is obvious that an unbiased judge would not deny a person justice because the person unknowingly failed to ask permission to do something the court was supposed to let him do. This was not a game. This was a serious case of malicious damage to a person's most precious possession – his reputation.

c) The only reasonable explanation for the judges' actions -- at both the district court and the court of appeals levels -- is discrimination against a small and unrepresented plaintiff.

B. *Norwalk CORE* shows that "arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and public interest as perversity of a willful scheme." I think, and many people seem to agree, that many judges in Nebraska and across the country – knowing that they are protected by judicial immunity – have their own brand of "justice." This is commonly referred to as "good ole boy justice." I think that this form of "justice" has been practiced for so long a time that some of its practitioners don't even realize they are doing anything wrong. I think their actions have become thoughtless. But as shown in the *Norwalk CORE* case, such thoughtlessness is as perverse as a willful scheme.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Stephen R. Classe
Pro se
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January 15, 2008

APPENDIX A

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 STATE CAPITOL BUILDING
LINCOLN, NE 68509
(402) 471-3731

September 11, 2007

Stephen R. Classe
13210 Trendwood Drive
Omaha, NE 68144

IN CASE OF: A-06-001454,
Classe v. College of Saint Mary

The following internal procedural submission or filing by a party:

Misc. Submissions to Court – 7A(1) **submitted or filed** 07/27/07

has been reviewed by the court and the following order entered:

District court orders of September 22, 2006, and December 8, 2006, affirmed. See Rule 7A(1); Nolan v. Campbell, 13 Neb. App. 212, 690 N.W.2d 638 (2004); Young v. First United Bank of Bellevue, 246 Neb. 43, 516 N.W.2d 256 (1994). See also, Neb. Ct. R. of Pldg.

in Civ. Actions 15(a) (rev. 2003); State v. Shepard, 239 Neb. 639, 477 N.W.2d 567 (1991).

Respectfully,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

APPENDIX B

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STEPHEN R. CLASSE,	)	
Plaintiff,	)	**DOC. 1057 PAGE 993**
vs.	)	
COLLEGE OF SAINT MARY AND ADELE L. HARRISON,	)	**ORDER**
	)	9-21-06
Defendants.	)	

This matter came on for hearing before the Court on September 11, 2006, on motions made by both Defendants for summary judgment. Evidence was presented by the parties, and the matter submitted to the Court on briefs of the parties. Based on the foregoing, the Court finds as follows:

In his first cause of action in his Petition, the Plaintiff claims that Defendant Adele Harrison maliciously made false and defamatory statements about him to his superiors at Defendant College of Saint Mary (CSM) Sally Bisson and Martin Larrey, which resulted in Defendant CSM's decision to terminate the Plaintiff as an adjunct professor at CSM. The Plaintiff alleges that he was unjustly fired as a result of Defendant Harrison's false and defamatory statements. Defendant Adele Harrison has moved for summary judgment on Plaintiff's claim in his Petition that she is liable to the Plaintiff for defamation.

According to the evidence, Sally Bisson and Martin Larrey were the Plaintiff's superiors at CSM at the time that he was employed with CSM as an adjunct professor. Defendant Harrison communicated to Sally Bisson and Martin Larrey complaints that were made to her about the Plaintiff by three of his students: Sara Campbell, Melissa Brandl, and Kelli Kentch. By their affidavits, these three students confirmed that they had communicated complaints to Defendant Harrison about the Plaintiff. The general nature of the complaints was that the Plaintiff expected too much of these three students in terms of their performance in his accounting class. Defendant Harrison in turn, following school procedure, communicated these complaints to the Plaintiff's faculty superiors, Sally Bisson and Martin Larrey. Apparently as a result of these complaints, the Plaintiff was terminated as an adjunct professor at CSM.

The Court finds that, based on the evidence, a qualified privilege existed between Defendant Harrison and Sally Bisson and Martin Larrey, as Defendant Harrison had an interest in the subject matter of her communication, and her communications were made to people who also had an interest in the subject matter, and that Defendant Harrison had a reasonable duty to communicate the information. Further, there is no evidence whatsoever in the record that the Plaintiff would be able to prove actual malice on the part of Defendant Harrison in the communications in question. Further, the evidence shows that it was reasonable for Defendant Harrison

to believe the complaints of the students which she communicated to be true. The Court finds that Defendant Harrison has shown that there is no genuine issue of material fact as to her liability under the circumstances, entitling her to a judgment as a matter of law, and that the Plaintiff has failed to present evidence showing that such an issue of material fact exists, and therefore, Defendant Harrison should have judgment in her favor as a matter of law, and the Plaintiff's Petition dismissed as to her.

As to Defendant CSM's motion for summary judgment, the Plaintiff alleges that he was unjustly fired by CSM. According to the evidence, the Plaintiff was hired by CSM as an adjunct professor, under written contract which allowed CSM to terminate the Plaintiff for cause as specified in the CSM Adjunct Faculty Handbook, which Handbook provided for a grievance procedure for faculty members. Material issues of fact exist as to whether the Plaintiff was terminated by CSM "for cause", and Defendant CSM's motion for summary judgment should be accordingly denied.

IT IS SO ORDERED this 21 day of September, 2006.

BY THE COURT:

/s/ Gregory Schatz
GREGORY M. SCHATZ
District Court Judge

cc: Stephen R. Classe
13210 Trendwood Drive
Omaha, NE 68144

Robert L. Lepp
Attorney at Law
Suite 500
11404 West Dodge Road
Omaha, NE 68154

APPENDIX C

COURT COPY

IN THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA

DOCKET 1057 PAGE 993

PLAINTIFF: CLASSE, STEPHEN R
VS
DEFENDANT: COLLEGE OF SAINT MARY

FOLLOWING PARTIES OR ATTORNEYS OF RECORD HAVE BEEN NOTIFIED THAT IN THE ABOVE ENTITLED CASE, ON THE 13TH DAY OF OCTOBER 2006, THE FOLLOWING DECISION WAS RENDERED:

CASE DISMISSED AS TO **AMENDED PETITION**

DATED THIS 13TH DAY OF OCTOBER 2006.

RUDY J. TESAR
CLERK OF THE
DISTRICT COURT

PRO SE

ROBERT L LEPP
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11404 WEST DODGE ROAD
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PHILIP J. MCGARGILL
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STEPHEN R. CLASSE
13210 TRENDWOOD DR
OMAHA, NE 68144

APPENDIX D

IN THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA

STEPHEN R. CLASSE, Plaintiff, vs. COLLEGE OF SAINT MARY and ADELE L. HARRISON, Defendants.	)	DOC. 1057 PAGE 993 **ORDER** 12/7/06

This matter came on for hearing on December 6, 2006, upon the Plaintiff's Motion for Reconsideration of this Court's Orders of September 21, 2006 and October 13, 2006, and the Defendant College of Saint Mary's ("College") Motion for Reconsideration of this Court's Order of November 20, 2006. The Plaintiff appeared pro se and the Defendants appeared through their counsel, Robert L. Lepp of McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O.

Hearing was held, evidence adduced, arguments made and the Court, being fully advised in the premises, makes the following orders:

IT IS HEREBY ORDERED that the Plaintiff's Motion for Reconsideration of this Court's Order of September 21, 2006 granting Defendant Adele Harrison's Motion for Summary Judgment is denied for the reason that Plaintiff's reconsideration Motion as to this Order was not timely filed pursuant to Neb. Rev.

Stat. § 25-1329 (Reissue 1995) and further, for the reason that Plaintiff has failed to establish any basis to vacate such Order and therefore such Order stands;

IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration of this Court's Order of October 13, 2006 striking Plaintiff's Amended Petition is denied for the reason that Plaintiff did not obtain leave of the Court to file such Amended Petition and even if he had obtained such leave, by reason of the Court's Order of September 21, 2006, finding that Defendant Adele Harrison's statements were privileged and therefore she could not be liable, there is no basis on which the Defendant College could be liable;

IT IS FURTHER ORDERED that the Defendant College's Motion for Reconsideration of this Court's November 20, 2006 Order is granted and accordingly, the Court's Order of November 20, 2006 is vacated and the Defendant College, having tendered to the Clerk of the District Court the full amount that Plaintiff could receive by law if he were to prevail at trial, shall be and is hereby discharged from any further liability and/or obligation to the Plaintiff and this case shall be and is hereby dismissed with prejudice in its entirety, complete record waived;

IT IS FURTHER ORDERED that the Clerk of the District Court of Douglas County is directed to disburse the amount deposited with the Clerk by the

Defendant College plus any interest thereon to the Plaintiff upon Plaintiff's written request.

Dated this 7th day of December, 2006.

BY THE COURT:

_____

District Court Judge

Prepared and submitted by:

Robert L. Lepp, #15711
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& LEPP, P.C., L.L.O.
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ATTORNEYS FOR DEFENDANT

APPENDIX E

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
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2413 STATE CAPITOL BUILDING
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October 24, 2007

Stephen R. Classe
13210 Trendwood Drive
Omaha, NE 68144

IN CASE OF: A-06-001454,
Classe v. College of Saint Mary

The following internal procedural submission or filing by a party:

Pet Appellant for Further Review & Brf **submitted or filed** 10/10/07

has been reviewed by the court and the following order entered:

Petition for further review overruled.

Respectfully,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS